O/Nego. Instru/43

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File No.

Legal Department

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Subject:—

Opinion under the

Negotiable Instruments Act

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457-A

C O N T E N T S.

Legal Department File No.O.Nego.Instru/43.

Sr.No.	Compilation No.	Subject.	Pages.
		Opinions under the Negotiable Instruments Act.	
1	O.No.-7965 3/11/1943	The Government Securities Manual, paras 101(b)(II) & 112. Government Provisory Notes - endorsement of - in favour of the Reserve Bank of India.	1-6

RHB.
9.7.

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Submitted.

2. Please see R.L.A.'s opinion No.9990 dt. 15.12.42. in which the R.L.A. advised that in the case of Govt. Promissory Notes, it would be necessary to endorse such notes in favour of the Reserve Bank of India to enable it to collect interest on them for the Administrator General and Official Trustee. But the R.L.A. pointed out that the Official Trustee's view that endorsement would amount to divestment of title does not appear to be correct. In order to meet the difficulty if any the R.L.A. further advised that the endorsement may be made restrictive e.g. onlyfor the purpose of collecting interest and that a second alternative would be to execute a legal document showing that the securities were deposited merely for collection of interest. The F.D. in view of R.L.A's opinion, enquired of the Reserve Bank of India if the Bank has any remarks to make with regard to the suggestion of making of restrictive endorsement in favour of the Bank so as to exclude the right of the Bank to further negotiate the instruments. The Bank has replied (p.11) that it cannot a restrictive endorsement or a Power of Attorney as suggested by Bombay Govt. The F.D. now points out that other officers endorse securities in favour of the Reserve Bank under para.101(b)(II) of Govt. Securities Manual without insisting on such power or attorneyor restrictive endorsement and that they have not found it neceesaryto safeguard their rights of ownership byother methods. F.D. also points out that para.112 of the Manual requires the Reserve Bank to publish the end of each calender

year a list of notes in its safe custody showing names of depositors, Govt. officers through whom notes are received and the amount of securities distributed by loans held on account of each depositor. The F.D. has therefore propsed to accept the Bank's proposal and does not think it necessary to insist on any other arrangement as proposed bythe R.L.A. The papers have been referred to the R.L.A. requesting him to state whether he agrees with F.D.'s view.

3. The R.L.A. has held that mere endorsement on G.P. Notes in favour of the Reserve Bank in terms of para 101 (b)(ii) of the Manual would not amount to divestment of the Official Trustee's title. He has shown in the opinion that from the respective situation if the parties in this case, it is clear that there is no intention to transfer ownership to the Bank. In view of the provisions of para.112 of the Govt. Securities Manual it can be proved that the deliveryof the G.P. Notes to the Reserve Bank was made for the safe custody and for a special purpose or collecting interest. The other permissive methods suggested bv the R.L.A. were intended for placing the title of the official Trustees in the G.P.Notes beyond doubt. But these methods were not according to him quite necessary. The R.L.A. may therefore agree with the view taken by F.D. in para.2(b) of its note dated 24.6.43.

Sd/- K.J.PTHARE.
17.10

P.A.

The principal objection raised bythe Administrator General & Official Trustee, Bombay, against entrusting the safe custodyof securities foe collection of interest to the Reserve Bank of India is that such transfers of endorsement would amount to the Administrator General and the Official

Trustee divesting himself of, and parting with the titl to, the properties entrusted to his care and would amount to a serious breach of trust. As regards this objection, it was pointed that the Govt. Securities held by the Administrator General & Official Trustee may be either:-

(i) stock certificates or (ii) Govt. Promissory Notes, and that so far as stock certificates are concerned, in pursuance of the procedure prescribed in para.30 of the Govt. Securities Manual, no question of endorsing them for the purpose of collection of interest would arise.

2. As regards interest payable on Govt. Promissory Notes, however, an facements are made lengthwise across the face of the Note to the effect that interest is payable at the place named and when such an enfacement has been made, the holder can obtain payment of interest at that place upon presentation of note. Consequentlyx endorsement of G.P. Notes in favour of the Reserve Bank would no doubt be necy. to enable it to collect interest on them forthe Administrator Genl & Official Trustee. The Official Trustee, however, apprehends that such an endorsement would amount to divestment of the title in the securities. In R.L.A's opinion No.9990 dated 15.12.42, it was pointed out that ordinarily endorsement and delivery would amount to divestment of title, but that is not necessarilyso. It is the intention to pass the property in the Note that is essential to make the delivery effectual. (Cf.(1856) 10 Moo P.C. 91 At p.103). Consequently, under sec.46 of the Negotiable Instruments Act, it maybe shown that the bill was delivered to the payee or that a bill was endorsed to take

effect on certain conditions being complied with or for a specified purpose. ere deliverywithout intition of passing the property is not sufficient to constitute a complete contract. Moreover, under section 50 endorsement alone would not vest the property in the instrument to the transferee; in order to have the effect, the end rsement must be followed by the delivery and under section 46 it may be shown that such deliverywas made conditionally or for a special purpose onlyand not for transferring absolutely the property therein. In view of this legal position, R.L.A. held that "the endorsement made by the Official Trustee under para.101(b)(ii) of the Securities Manual on securities deposited with the Reserve Bank of India for safe custodywould not amount to transferring absolute property."

However, ex Majore cautela R.L.A. suggested two alternatives, to tide over the difficulty, namely:-

(a) that endorsement may byexpress words, be restrictive e.g. only for the special purpose of collecting interest; or

(b) a power of attorney may be executed bythe Administrator General and the Official Trustee in favour of the Reserve Bank.

3. On the basis of the above mentioned opinion of the R.L.A. the F.D. infomed the Reserve Bank that "if and where endorsement on securities is considered necessary, the endorsement may be made restrictive, that is, for the purpose of collecting interest only, and that for this purpose Securities Manual would have to be suitably amended. An alternative course, which seems preferable, is to execute a legal document showing that securities are deposited merely for collection of interest - a power of attorney executed by the Administrator General and the Official Trustee in favour of the Reserve Bank limiting its power to the collection of interest.

~~to the collection of interest, will serve the pupose.~~ The Reserve Bank replied that it would be prepared to undertake the work in connection with safe custody of securities on behalf of the Administrator General and the Official Trustee subject to the conditions mentioned in its letter dt. 24.8.43, one of which is as follows:

> "(ii) Govt. Promissory Notes will have to be endorsed in favour of the Bank to enable it to cancel them and credit them to a SubsidiaryGeneral Ledger account in accordance with the Bank's usual procedure. The Bank cannot accept a restrictive endorsement or Power of attorney as suggested by Bombay Govt."

The F.D. office refers to para.112 of the Securities Manual and considers that in view of such practice, the alternatives proposed bythe R.L.A. would not appear to be necessary. The R.L.A. is requested to advise whether he agrees with the F.D. view.

4. As pointed out above, the R.L.A. held that "In view of the legal position stated above, the endorsement made by the Official Trustee under para.101(b)(ii) on securities deposited with the Bank for safe custodywould not amount to transferring absolute property in the securities". The two alternatives were suggested ex majora cautela with a view to surmount the apparent difficultyfelt by the Administrator General & Official Trustee. Under para.112 of the Securities Manual, the officers of the Reserve Bank of India which accept Notes for safe custody in terms of para.101(b)(ii) are required to publish at the end of each year a list of Notes in their respective custody showing the names of depositors, the Govt. officers through whom the deposits were received and the amount of securities distributed by loans,

held on account of each depositor (see form 20 at p.?01 of the Manual). From the publication of such a list of securities under para.1 it may be gathered that the intention underlying the endorsement and delivery of the securities to the Reserve Bank was not to transfer absolutely the property in such securities, but that it was a restrictive endorsement and the delivery was made conditionallyfor a special purpose, namely, for safe custodyand collection of interest, The publication of the list of securities under para 112 in form 20 would clarify the intention and no further arrangement wither in shape of restrictive endorsement or of power of attorneywould appear to be necessary The F.D. view appears to be correct.

Id/- E.B.
18.10.

A.L.R.

R.L.A. mayagree with the view taken by F.D. and return the papers with the endorsement, "Seen and returned"

Id/- R.T.K.
22/10

R.L.A.

I agree. The official correspondence relating to the transfer of securities pronotes to the Reserve Bank coupled with annual publication of the list of Securities etc. held bythe Reserve Bank on behalf of others would be an adequate safegured against the Official Trustee apprehension that endorsement would amount to divestment of title.

Reply may be as suggested.

Id/- P.N.M.
1/11

Office of the R.L.A. .....

Office of the R.L.A.

Seen and returned.

Id/- P.N.H.
2/11

Remembrancer of Legal Affairs.

U.S.to F.D., No.7885, dated 3.11.1913.

RHB.
9.7.